

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 02-04
(August 12, 2002)

Judicial Evaluation of Attorneys

Issues

1. May a judge submit a written statement, giving his opinion of an attorney's professionalism in response to a request by counsel representing the attorney in a specialization recertification proceeding?

Answer: Yes.

2. Does it make a difference if the attorney currently has a case pending before the judge?

Answer: No.

Facts

An attorney's application for recertification as a specialist was rejected on the grounds of unprofessional conduct. The attorney, through counsel, is now pursuing an adversarial process prescribed in the Rules and Regulations of the Arizona Board of Legal Specialization. Counsel for the attorney has contacted a superior court judge for a written statement addressing whether the attorney has ever practiced before the judge, and the judge's opinion as to the attorney's professionalism. The judge has known the attorney for a number of years and believes he is qualified to comment on the attorney's professional conduct. Also, the attorney currently has a case pending before the judge in which he has already made an appearance. Under these circumstances, the judge has inquired whether it would be appropriate to respond to counsel's request.

Discussion

In Opinion 00-04, the advisory committee emphasized the practicality and desirability of allowing judges to evaluate attorneys by pointing out that,

Judges are perhaps in the best position to observe and evaluate lawyer performance as it relates to the administration of justice [T]he public appreciates the court's integral role in the administration of justice and . . . there is little danger, unless there is evidence that the evaluation process is abused, that the public's perception of the court's integrity or impartiality will suffer by allowing judges to participate in the formal process of evaluating lawyers who appear before them regularly

The committee further recognized in Opinion 92-07 that the legal community receives significant benefits when judges evaluate lawyers:

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Many of the State Bar's programs, committees and sections would not function at their current high level of performance without the significant effort of many volunteer lawyers and judges. Judges are a valuable resource for the State Bar and have served on and, indeed, chaired a number of important State Bar committees over the years. They have traditionally provided a necessary and valuable point of view which may not otherwise be provided. It is important to encourage their continued participation in these various State Bar programs and activities.

Here, the judge has observed the attorney over a number of years and is qualified to comment on the attorney's professional conduct. There is no reason to suspect the judge would render anything other than an unbiased, honest and impartial statement regarding the attorney's professionalism. Furthermore, Opinion 00-04 points out that Canon 4B encourages judges to participate in activities that are geared toward improving the administration of justice. Clearly, the judge's opinion as to whether the attorney is professional and should be recertified contributes to a just result.

We note that in Opinion 00-04 the committee found no impropriety when an outside body (the city) sought information from a judge regarding the performance of certain attorneys under contract with the city. While here the attorney has sought the judge's opinion in order to serve the attorney's self-interests, the result is still intended to assure that only attorneys with high ethical and professional standards become certified and re-certified.

Moreover, the Code of Judicial Conduct does not prohibit such a written statement. While Canon 2B provides that a judge shall not testify voluntarily as a character witness, a written statement about an attorney's professionalism does not equate to serving as a character witness "who testifies about another person's character traits or community reputation." *Black's Law Dictionary* 1596 (7th ed. 1999). Here, the judge is not commenting on the attorney's "character traits" or "community reputation"; he is opining on specific behavior observed in his courtroom. Although Canon 2B also prohibits a judge from "lend[ing] the prestige of judicial office to advance the private interests of . . . others," submission of the written statement required here is not intended for that purpose. Significantly, commentary to Canon 2B explains that a judge may serve as a reference or provide a letter of recommendation "based on the judge's personal knowledge." As long as the information the judge submits is specific and relates to such personally observed conduct, the judge is in compliance with the judicial code.

Furthermore, the mere disclosure of the judge's opinion does not render the judge biased. Judges will always form an opinion of the attorneys who practice before them. Expressing that opinion as to a specific attorney does not render the judge biased any more than would the formation of the opinion in the first place. Obviously, if the opinion held by the judge, whether expressed or not, is so strong as to reflect an inability to be fair and impartial, then that judge must recuse himself. *See* Canon 3E(1) (providing that a judge must disqualify himself in a proceeding in which the judge's impartiality might reasonably be questioned). There is, however, no indication that such is the case here.

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With respect to whether the judge must disqualify himself from hearing the case currently before him, in which the subject attorney is participating, the judge must determine whether his impartiality might reasonably be questioned due to any perceived bias for or against the subject attorney and whether disclosure to the other party and opposing counsel may be required. It is important to note, though, that the mere issuance of the judge's letter by itself does not call into question the judge's impartiality. *See* Op. 00-04. (“[I]t is not likely in an ordinary situation that a judge's impartiality may reasonably be questioned because the judge participates in an evaluation process.”).

Applicable Code Sections

Arizona Code of Judicial Conduct, Canons 2B, 3E(1) and 4B (1993).

Other References

Arizona Judicial Ethics Advisory Committee Opinions [00-04](#) (Aug. 24, 2000); [92-07](#) (May 14, 1992).